tiuyIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

A.S.No.700 of 1997
and
C.M.P.No.11299 of 1997

1.The Commissioner,
HR. & CE Admn. Department,
Nungambakkam High Road,
Madras-34.

2.The Joint Commissioner, .. Appellants
HR. & CE Admn. Department,
Nungambakkam High Road,
Madras-34.

3.The Joint Commissioner,
HR. & CE Admn. Department,
Nungambakkam High Road,
Madras-34. .. Appellants

vs.

1.W.N.Alala Sundram,
2.Veeraraghavan
3.T.N.Singarayan
4.G.Kumaravelu

5.The Executive Officer,
A/m. Agastheeswarankoil,
Villivakkam, Madras-49.

6.The Executive Officer,
A/M. Somiya Damadaraperumal Temple,
Villivakkam, Madras-49. .. Respondents

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Prayer: This Appeal has been filed against the decree and Judgment dated 27.10.1995, passed in O.S.No.5916/1990, on the file of the First Assistant Judge, City Civil Court, Madras.

For Appellants : Mr.T.Chandrasekaran,
Spl.GP. for HR. & CE.

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For Respondents : Mr.V.RAhavacharai (For R1)
Mr.C.Ravichandran (For R2)
Mr.S.Shanmugam (For R5)
Mr.D.Nellaiaphan (For R6)

JUDGMENT

This appeal has been preferred against the decree and Judgment passed in O.S.No.5916/1990, on the file of the First Assistant Judge, City Civil Court, Madras, dated 27.10.1995. The Defendant is the appellant herein.

2. The short facts of the plaintiff's case in the plaint are as follows:-

2(i) The plaintiff has filed the suit to set aside the order passed in Appeal Petition No.57/87 by the first Defendant on 21.3.1990 and to declare under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (Act 22, 1959) that Pakkiyammal Trust is not a public trust. There was a trust by name Pakkiyammal in respect of Sri Swamiya Dhamodara Perumal temple as per HR & CE Act. The above said Pakkiyammal Trust cannot be known as a public trust. The second Defendant, the Deputy Commissioner of HR & CE Department, Chennai-34 has issued a notice claiming that Pakkiyammal trust is a public trust. The plaint schedule property are settled in favour of Pakkiyammal by her forefathers as per the above said settlement deed, Pakkiyammal was in possession and enjoyment of the plaint schedule property from 1928 to 1959. Pakkiyammal had executed a settlement deed in favour of Raju Cehnttiar and through him his wife Jegathambal got the plaint schedule property. After Jegathambal her son Natarajan Chettiar came into possession of the property and after Natarajan Chettiar his son plaintiff was entitled to the plaint schedule property and he was in possession and enjoyment of the same. The 6th and 7th Defendants have no right in the plaint schedule property. The petition filed by the plaintiff belonged to a private trust, was dismissed. The Appeal preferred by the plaintiff before the first Defendant was also dismissed. Under a wrong notion that the plaint plaint schedule property belonged to the 6th Defendant, the first Defendant has passed an erroneous order. The first Defendant has failed to note that there was no endowment in favour of the 7th Defendant. Only to perform certain Tharmam, a liability has been created over the property and it cannot be said that it was an endowment. The first Defendant has failed to consider that the plaintiff is the owner of the plaint schedule property. Hence to cancel the order of the first Defendant the plaintiff has filed the suit.

2(ii) The Defendants 1, 2 and 8 have filed a joint written statement and the other Defendants remain exparte. In the written statement it has been stated that there was no endowment performed as per the settlement deed executed by the forefather of the plaintiff,

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and 7th Defendant alone is entitled to enjoy the plaint schedule property. Pakkiyammal Trust was created only for performing a specific endowment. The plaintiff was not given any specific right in respect of the suit property. The trust has no right in the suit property. The order passed by the 8th Defendant is valid. Hence the suit is liable to be dismissed.

3. On the above pleadings the learned trial Judge had framed four issues and after going through the oral and documentary evidence has come to a conclusion that the plaintiff is entitled to the relief as prayed for and consequently set aside the order passed by the first Defendant dated 21.3.1990 under Ex.A.6. Aggrieved by the above said findings of the learned trial Judge, Defendants 1, 2 and 8 have preferred this Appeal.

4. Now the point for determination in this Appeal is whether any specific endowment has been made under Ex.A.1-document dated 4.6.1926 warrants a declaration that the 7th Defendant temple is a religious institution under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959?

5. The point:-

5(i) Ex.A5 is the order of the Deputy Commissioner, HR & CE Department, passed under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowment Act. The plaintiff has claimed that the premises in Door No.17, Sivankoil Street, West Madras Street, Villivakkam, Madras-49, comprised in S.No.1/A, 78, measuring North to South 36' and East to West 213' at Madras-49, belonged to a Religious Institution on the ground that a specific endowment has been made against the said property. Aggrieved by the said order of the Deputy Commissioner, HR & CE Department, under Ex.A.5, the plaintiff has preferred an Appeal before the Commissioner, who also confirmed Ex.A.5-order under Ex.A.6, which is being challenged in O.S.No.1596/1990 before the First Assistant Judge, City Civil Court, Chennai, who had allowed the claim of the plaintiff setting aside Ex.A.6-order, which necesitated the Defendants 1, 2 and 8 to prefer this Appeal before this Court.

5(ii) The only point to be decided in this Appeal is whether any specific endowment has been made under Ex.A.1-document or Pakkiyammal derived any right in respect of the plaint schedule property under Ex.A.1. The recital in Ex.A.1 is to be read in between the lines to see whether any right has been conveyed under Ex.A.1 in favour of Pakkiyammal. The exact recital in Ex.A.1 in favour of Pakkiyammal dated 4.6.1926 executed by the trustees of Sri Agastheeswara Swamy Thevasthanam are as follows:-

"திருப்பதி நாராயண செட்டியார் பாரிாள் பாக்கியம்மாளுக்கு மேற்படி ஜில்லா மேற்படி தாலுக்கா மேற்படி சப்டி ிடிாிக்கட்டைச் சார்த 73வது

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நெம்பர் வில்லிவாக்கம் கிராமத்தில் ஸ்ரீ அகத்தீஸ்வர சுவாமியார் தேவஸ்தான தற்மகர்தாக்களான தாலுகி, சுாமிநாத முரதலியார் (1) ½ தாலுகி, குாந்தைமுரகேச முதலியார் (2) வெலுகடராமளு ரெட்டியார் (3) சுாமி ரெடடியார் (4) ஆகிய நாலுகள் நால்வரும் யேகோபித்து எழுதிக்கொடுத்த தற்மசத்திரம் கட்டுவதற்க்கும் கீர்ழ நில சுவாதீன அக்கிரிமெண்டு 1921 வருடம் சென்னப்பட்டணம் முத்தியால் பேட்டை மூட்டைக்காரன் தெருவு, 4வது நெம்பர் வீட்டிலுள்ள மாலுகாடு எல்லப்ப செட்டியாருக்கு கீழ்நிலம் சுவாதீனம் செய்து பெரிய சத்திரம் கட்டி வைததவளையில் தேவஸ்தான திருப்பணி முதலானதுகள் செவ்வையாய் நடந்து வருவதைப்பற்றயும் அந்த சத்திரம் தை? ஆடி மாதலுகளிலும் உர்ச்சவ தினலுகளிலும் வரும் ஜனக் கூட்டலுகளுக்கும் போதுமானதாக இல்லாததினாலும் ½ தேவஸ்தான அபிவிருதியைக் கருதியும் இன்னொரு சத்திரம் கட்டுவது இவசியமென்று எலுகளுக்கு தோன்றுவதால் ½ திருவொற்றியூர் கிராமத்திலுள்ள கா,கந்தசாமி செட்டியாரை நாலுகள் கேட்டுக்ககொண்டபடியால் அவர் தன் குமாரத்தியும் காலஞ்சென்ற திருப்பதி நாரயண செட்டியார் பாரியாள் பாக்கியம்மாளக் கொண்டு சத்திரம் கட்டுவதாகவொப்புக் கொண்டதால் அந்த அம்மாளுக்கு கீழ் செ½டியூல்ல் கண்ட செக்பார்தி படி கீழ் நிலத்தை நாலுகள் நால்வரும் ஒருமித்து மனப்பூர்வமாய் சுவாதீனம் செய்வதாய் ½ தேவஸ்தானம் தவிர எலுகளுக்காவது எலுகள் பிர்க்காலத்தில் வருபவர்களுக்காவது யாதொது அக்குறுகிடையாது ½ பாக்கியம்மாள் சுவாதீனம் செய்துக் கொள்ளும் நிலத்தில் ஸ்ரீவிதாமன தர்ம சத்திரம் கட்டி சிவாசாதனம் போட்டு தன ஆயிசு பரியந்தம் தானேபரிபாலித்து பிரகு தன்னால் நியமிக்கும் வாரிசுகளாலும் ஏஜெண்டுகளுக்கும் ஸ்ரீவிதார்ப்பாடு செய்து பரிபாலித்து வரவேண்டியது, ½ சத்திரம் எந்தகாலத்திலும் பொது ஜனத்திற்க்கே உபயோகிக்க வேண்டியது குடித்தனத்திற்க்கு எந்த காலத்துக்கும் விடக்கூடாது இந்த சத்திரத்தில் எவ்விதமான லாபமும் ஆகை வைக்க்க கூடாது, ½ சத்திதரத்திற்க்குண்டான சிப்பந்தி சிலவுகளும் மராமத்துகளும் ½ பாக்கிம்மாளும் ½ பாக்கியம்மாள் ஏர்ப்படுத்தும் வாரிசுகளும் ஏஜெண்டுகளுமே சொந்தத்திலல செய்துக்கொள்ள வேண்டியது, ½ சத்திரதற்க்கு வரியோப்பட்டாலும ½ பாக்கியம்மாள் வகைராக்களே நடத்திக்கொள்ளவேண்டியது, ½ சத்திரத்தில் பஞ்சமர் மகம்மதியர் நீறுகலாக இந்து பிராணிகள் மூன்று தினம் தலுகவும் கலியாண முதலான சுபகாரியலுகடக்கும் தேவஸ்தான உபயக்காரர்கடக்கும் ஒரு நாள் இரண்டு நாள், மூன்று நாள் தலுக உபயோகப்படவேண்டியது, ½ பாக்கியம்மாளுக்கும் அவர் வாரிசுகடக்கும் இ½டப்படி லெடர் மூலமாக சுபகாரியலுகடக்கு உபயோகிக்க வேண்டியது அசுபபிரயோ ஜனலுகடக்காவது அசுத்தமான பிக்கணி ஜனலுகளுக்காவது இடந்தரக்கூடாத ½ சத்திதரத்திலும் அடிநிலத்திலும் எந்தகாலத்திலும் வாரிசுகளாலும் ஏஜெண்டுகளாலும் ஒத்தி கிறையம் முதலானதுகள் செய்ய அதிகாரம் கிடையாது இந்தப் படிக்கு நாலுகள் நால்வரும் சம்மதித்து எழுதிக்கொடுத்த அடிநிலஸ்வாதீன அக்கிரிமெண்டு .

The above said recital in Ex.A.1 will clearly go to show that Pakkiyammal was entrusted with the suit property only to construct an additional Choulty to accommodate the devotees to Sri Agastheeswara Swamy Temple. The recital will clearly go to show that since the said

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Pakkiyammal volunteered to construct the above said Choulty out of her own volition, the trustees of Sri Agastheeswara Sawmy Temple have entrusted to her the plaint schedule property. It has been specifically mentioned that only the public are entitled to use the choulty and it has been specifically mentioned that the Choultry is to be maintained by the said Pakkiyammal, her decendence or her nominees by spending money from their pocket. It has been further specifically stated in Ex.A.1 that no one can create any mortgage or any encumbrance over the plaint schedule property and it has been further emphasized that the choultry cannot be rented out at any time and no income can be derived from out of the choultry and no one cae have any desire to get gain from out of the above said choulty. Under such circumstances, it is clear from the recital that the intention of the trustees who had executed Ex.A.1, that there was no right given to Pakkiyammal except to construct an additional Choultry in the suit property since she herself volunteered to do the said service. The contention of the plaintiff that under Ex.A.2 and Ex.A.3, he cannot trace his title to the suit property because Pakkiyammal herself has no right to execute Ex.A.2-settlement deed, since she herself had not derived any title to the suit property under Ex.A.1.

5(iii) The learned Special Government Pleader appearing for the appellants relied on 2000(3) LW 468 (Commissioner, HR & CE, Administration Dept. Vs. C.V.Sundarsan and another), and contended that as per the said dictum the recital under Ex.A.1 will attract the provision under Section 6(19) of HR & CE Act and hence the order passed under Ex.A.5 & 6 are to be confirmed by dismissing the suit filed by the plaintiff. The facts of the above said case are that:

> " One Cheetalla Venkatachalam Chetty Charities founded by Cheetalla Venkatachalam Chetty in the year 1882, had set apart his house bearing old No.174, New No.61, Govindappa Naicken Street, George Town, for the performance of Thadhiarathanal Service in Perumal Temples at Madras, from which food had to be distributed to the "Desanthiris" in the temples. A slab inscription dated 22.09.1882 Written Statement also embedded on the wall of this property to denote the creation of this endowment. Sometime in the year 1969, the Deputy Commissioner, Hindu Religious and Charitable Endowments, Madras, initiated proceedings under Section 61(1) of the Hindu Religious and the Charitable Endowments Act, 1959,(hereinafter referred to as the Act) to frame a scheme in respect of the Charities on acount of the mismanagement by the then trustee. The grandson of the founder one C.Ragavalu styling himself as a Defacto-trustee also filed an application under Section 63(1) of the Act for a declaration that this endowment was a private trust. Both these maters were heard together by the Deputy Commissioner and while dropping the proceedings under Section 64(1) viz.,

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O.A.19/69, he dismissed the application under Section 63(a) of the Act holding that the suit trust is religious Charity. Against this, the aforesaid Sri.Ragavalu Chetty filed an appeal under Section 69(1) of the Act to the Commissioner, HR & CE. This appeal was also dismissed by the Commissioner holding that the property is a specific endowment under the Act. Aggrieved by this, the said Ragavalu Chetty, grandson of the Founder of the Charities filed the statutory suit under Section 70(1) of the Act before the City Civil Court at Madras viz., O.S.No.2114 of 1981. According to him, the trust was purely private. There was no specific direction by the Founder to perform the Charity in any particular religious institution and further there was no absolute dedication of the property for the performance of any "Kattalai" to made the charity, a specific endowment and therefore, he prayed that the order of the Commissioner, HR & CE,be set aside.

The Commissioner, HR & CE, in the Written Statement arrayed as the first defendant stated that the statutory authorities had correctly found that there was an absolute dedication by the Founder and the clandestine removal of the stone inscription also proved that there was an attempt made by the present defacto trustee to remove the property from the purview of the HR & CE, department. Therefore, the defendant prayed that the suit should be dismissed.

After going through the evidence the learned trial Judge held that:

"The property had been endowed by the donor for the performance of service of feeding the pilgrims in Vaishanavite Temples in Madras City and dismisssed the suit, holding tht the suit endowment is of a public nature connected with the temples and the trust.

The appeal filed before this Court was allowed, setting aside the decree and judgment of the trial Court. Against that order of the single judge, Letters Patent Appeal was filed wherein it has been held as follows:

> "The Charity to be performed here is the Thahirahannai service which is propitiation and offering of food to the deity at the Perumal temples and thereafter the Founder intended the food to be distributed to the pilgrims. The feeding of pilgrims has been held in the aforesaid case a public charity and since it is associated with the offering at the Perumal Temples it partakes of a religious character also. It cannot also be denied that the pilgrims at Perumal temples will only be Hindus.
>
> Appeal was ultimately allowed by the Division Bench, setting aside the order of the learned Single Judge and thereby dismissed the suit."

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The above said dictum squarely applies to the present facts of the case. Here also under Ex.A.1 Pakkiyammal was given only a right to construct an additional choultry in the suit property and there was endowment created by dedicating the same to the use of the public particularly to those devotees who throng the temple during Thai and Adi festivals. Since the Choultry, which is in existence could not accommodate them the trustee who wrote Ex.A.1 had felt that an additional choultry is absolutely necessary to accommodate the devotees who visit the temple during the months of Thai and Adi. Pakkiyammal was given a right of maintenance of the above said choultry and she was not given any right to neither use the choultry for more than three days or to get any income from out of the above said choultry. It has further been specifically stated in Ex.B.1 that only out of her own income Pakkiyammal has to maintain the above said choultry. So, the above said dedication of choultry to the public under Ex.A.1 is only an endowment which will attract the provision contemplated under Section 63(a) of the HR & CE Act.

5(iv) The learned counsel appearing for the respondent would contend that Pakkiyammal was given a right to maintain the choultry from out of her income and hence there was no endowment created for the suit property. In respect of this contention the learned counsel for the respondents relied on 2001(2) CTC 351 (The Commissioner, HR & CE,(Admn) department vs. N.A.Ramaswamy Chettiar and two others). The facts of the case will not be applicable to the present facts of the case because the subject matter of the said case related to a private trust belonged to Vanika Vaisya Community. The facts of the above said case in brief are as follows:

> "People belong to Vanika Vaisya Community of Mannachanallur have formed a sangam and named it as "Mannchanallur Vanika Vaisya Sangam" (hereinafter called as "the Sangam") and registered the same under the Societies Registration Act. The said sangam was represented by the President and Secretary, who have filed the suit under Section 70(1)(ii) of the Hindu Religious Charitable Endowments Act (Act 22 of 1959) read with Order 7, Rule 1, CPC in O.S.No.620 of 1980 on the file of Subordinate Judge, Tiruchirapalli to set aside the order of the Commissioner of Hindu Religious and Charitable Endowments (Admn.) Department, Madras dated 19.2.1980 in A.P.No.58 of 1977 and also prayed for a declaration that the suit properties are not the properties of any religious endowments. The learned Subordinate Judge, Tiruchirapalli decreed the suit on 21.09.1981 and the same was confirmed by the learned Single Judge of this Court in A.S.No.369 of 1984 by the Decree and Judgment dated 2.1.1996. As against the same, the Commissioenr, HR & CE(Admn.) Department has preferred the Appeal before the Division Bench of this Court, wherein it has been held as follows:

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"A cursory perusal of the deed dated 9.5.1961 would disclose that the people of a particular community convened the General Body Meeting on 11.2.1960 and endowed the properties to carry out certain Upayams (Charities) and the same was reduced into writing for the benefit and guidance of future generation of that community people. As per the unanimous decision taken on that day, the settlement deed was also executed and registered, on 9.5.1961. It was further resolved that the properties will be administered. Upayams would be carried out, by the presidents of the Sangam as per the by laws of the Sangam as such, the property vests with Sangam and the performance of Charities are carried out as per the resolutions passed in the General Body, which are amenable to changes and that therefore, the Charities set out in the deed are not specific endowments and the HR &CE department cannot poke their nose in the administration."

But in the case on hand there is no private trust at all. The trustees of a particular temple have executed Ex.A.1-deed to construct an additional choultry for the purpose of public use. Under such circumstances, the facts of the above said dictum will not be applicable to the present facts of the case.

5(v) The other case relied on by the learned counsel for the respondents is 1991 LW 337 (R.M.AR.AR.RM.AR.Ramanathan Chettiar Vs. Commissioenr for HR & CE., Madras). The facts of the said case are as follows:

"Late RM.AR.AR.RM.Arunachala Chettiar, a native of Devakottai, was religious and charitable minded. According to the plaintiff, he created endowments purely of a private character for the spiritual benefit of himself, his descendants, the members of his family and his close relatives and friends. He died on 23rd February, 1983, leaving behind him surviving his two widows and a widowed daughter-in-law, the wife of a predeceased son, who was also childless. Each of the two widows and the widowed daughter-in-law adopted a son in accordance with the custom of the Nattukotai Chettiar community. The plaintiff and the second Defendant are the adopted sons of late Arunachalam Chettiar and the third Defendant is his adopted grandson. Consequent upon certain internal disputes in the family a suit for administration and partition of the estate of late Arunachalam Chettiar was filed, and it was numbered as O.S.No.93 of 1938 on the file of the Sub-Court, Devakottai. In that suit properties privately endowed by late Chettiar were also the subject-matter. Two joint receivers were appointed in that suit which ended in a compromise. In the said compromise the private character of the endowment was

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recognised and a scheme was framed thereto under which the trust should be maintained in rotation by the plaintiff and Defendants 2 and 3 each for one year. Subsequently, in another family, litigation, O.S.No.35 of 1966 Sub-Court, Devakottai, the plaintiff has been recognised as the trustee to be in charge of the endowed properties. It is in that capacity and after due sanction the plaintiff has instituted the three suits referred to above in the circumstances to be stated hereinafter.

The plaintiff has traced the history of the endowments thus-Late Arunachalam Chettiar was doing worship in many saivite temples. He did many charities some of which were religious in character and some secular. He used to set apart moneys in the course of his business for the aforesaid purposes. Cosideratble amounts so set apart got accumulated. Late Arunachalam Chettiar, therefore, had to execute trust-deeds and at one particular point of time Written Statement was called upon to confirm such trust before the Income tax authorites. Ex.A.4 is one of such affidavit filed by him before the taxing authorities affirming the nature of the trust created by him. The trusts were being performed by turn trustees in accordance with the intentions of the author of the trust. There was no interference by the Hindu Religious and Charitable Endowments department till the death of the founder of the trust. At one time there was an attempt by the Department to interfere and levy fees under Act 19 of 1951, as if the endowments were of a public nature. The aggrieved persons filed successfully writ petitions before the High Court and prevented such a levy. But in the above proceedings the question whether the endowments created by late Aurnachalam Chettiar was of a public nature or whether it is a religious endowment coming within the provisions of Act 19 of 1951 was left open to be decided under the provisions of the Act itself. As the Deputy Commissioner for Hindu Religious and Charitable endowments, Thanjavur, initiated punitive proceedings against the plaintiff and defendants 2 and 3 under S.45 of Act 19 of 1951, hereinafter referred to as the Act the plaintiff and defendants 2 and 3 applied under Section 57 of the Act for due determination of the matter in issue whether the endowments created by late Arunachalam Chettiar were of a public or a private character.

The Deputy Commissioner after due enquiry was of the view that some endowments covered by the trust deed are religious and some specific endowments. An Appeal was preferred before the Commissioner, who by an order confirmed the order of the Deputy Commissioner. Hence the suits were filed before the Sub-Judge, challenging the orders of the Commissioner of HR & CE. The Sub-Judge has confirmed the

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orders of the Deputy Commissioner and Commissioner, HR & CE Department, by holding that the suit trust is a religious endowment and not a private trust. Against the said findings, the said Appeal was preferred, wherein it has been held as follows:

> "A 'Specific endowment' is defined thus in Sec.6 clause 19-
>
> 'specific endowment' means any property or money endowed for the performance of any specific service or charity in a math or temple, or the performance of any other religious charity, but does not include an inam of the nature described in Explanation(1) to clause (17).
>
> From the above definition it is seenthat every endowment made by a donor may not squarely come within its meaning. It should be clear either by express dedication or by necessary implication tht a particular property has been given for the performance of any service of a public nature connected with a temple. Such giving or endowing the property for the performance of any service or charity in a temple, etc., should be apparent from the evidence let in a particular case. It cannot be a matter of assumption or presumption unless by a course of conduct for years such inference is possible. Further, the property should have been given for the performance of any service of a public nature connected with the temple. In the instant case, the evidence is that the endowment is not to any particular temple. It is for the performance of abhishekam in the Siva temples in the country. Obviously therefore, it bristles with vagueness. The choice is left to the trustees for the time being of the endowment to choose the temple. The temple authorities are not even informed of such a performance of service. The fund is controlled by the trustees and the abishekam is performed in the name and jenma nakshathiram of the donor and the members of their family. The temple authorities cannot enforce the performacne of the service because they are unaware of the fact whether in one particular temple such abishekam is going to be performed at all during the Mahasivarathri day.

Under such circumstance only it has been held in the said case that there was no public dedication and there was no specific endowment. That is not the case herein. Under Ex.A.1 there is a specific endowment to the effect that the choultry to be constructed by the pakkiyammal is to be endowed for the purpose of public use. Under such circumstances, the facts in the above said case will not fit in with the facts of the present case.

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5(vi) The other case relied on by the learned counsel for the respondents is AIR 1974 ANDHRA PRADESH 316 (M.Appala Ramanujacharyulu Vs. M.Venkatanarasimhacharyulu and others), wherein it has been held that;

> "Mere execution of a deed of dedication without the donor intending to act upon the terms of the deed would not create a valid endowment. To constitute a valid endowment, it must be established that the donor intended to divest himself of his ownership in the property dedicated. In order to determine whether an endowment is nominal or real, the factors relevant and material are (i) Whether, infact, any endowment has been created or not,and (ii) the conduct of the parties and the surrounding circumstances. Were an endowment has, in fact, been created or a trust came into existence, the subsequent conduct of the parties with regard to the enjoyment of the property settled or endowed,is not very much material."

Under Ex.A.1, the donor has been specifically mentioned as "public". Under such circumstance, Ex.A.1 conveys a specific endowment in favour of the public. There was no right given to Pakkiyammal to enjoy or to possess the plaint schedule property under Ex.A.1. So under Ex.A.1 neither Pakkiyammal nor the plaintiff under Pakkiyammal can claim any right in respect of the plaint schedule property. The plaint schedule property under Ex.A.1 has been dedicated for the use of public and public alone viz, the devotees who come to the 6th Defendant-temple during Thai and Adi months.

5(vii) Yet another dictum relied on by the learned counsel appearing for the respondents is 1952(1) MLJ 282 (The Commissioner for Hindu Religious Endowments Board, Madras Vs. Sri Vinayakar Arudra Tiruppani Sabha, having its office at No.32, Vinai Theertha Vinayakar Koil Street, Kosapet, Madras). In the above said case while confirming the orders of a Single Judge, the Division Bench of this Court has held as follows:-

> "The appellant's case is almost entirely on the terms of the memorandum of association, Ex.P.4- according to him, the fact that the object in Written Statement mentioned as the conduct of the controller in a particular temple was sufficient to prove an endowment. We cannot agree. There cannot be an endowment unless there is a clear divesting of ownership of the owner in favour of the third party as trusteee or by a declaration constituting the owner himself as a trustee."

But in the case on hand there is a dedication under Ex.A.1 in favour of the public. Under such circumstance, it cannot be said that the orders passed by the Deputy Commissioner as well as the Commissioner under Ex.A.5 and Ex.A.6 are invalid. So necessarily this Court has to

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interfere with the Decree and Judgment of the learned trial judge in O.S.No.5916/1990 which in my opinion is completely erroneous in nature. The point is answered accordingly.

6. In fine, the Appeal is allowed with costs, setting aside the Decree and Judgment passed in O.S.No.1596/1990 on the file of the First Assistant Judge, City Civil Court, Chennai, and thereby confirmed Ex.A.5 and Ex.A.6- orders.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Registrar, City Civil Court,
Chennai.

2. The First Assistant Judge,
City Civil Court, Chennai.

3. The Record Keeper,
VR Section, High Court, Madras.

ONE CC TO THE SPL.G.P., HR & CE (SR NO 50480)

A.S.No.700 of 1997

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